

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA HOGANSON,

Plaintiff,

Case No. 2:04-cv-299

v.

Hon. Richard Alan Enslen

MENARD, INC.,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion to Dismiss for Failure to Serve Summons and Complaint Pursuant to Federal Rules of Civil Procedure, Rule 4(m) and Plaintiff's Reply in Opposition to Defendant's Motion to Dismiss.

Defendant moves the Court to dismiss Plaintiff's entire action because Plaintiff did not serve the Defendant with a Summons and Complaint within 120 days of filing the original Complaint as required under Federal Rule of Civil Procedure 4(m). Plaintiff filed the original Complaint on December 30, 2004, but did not serve the Defendant with a Summons and Complaint until May 18, 2005, which was 139 days after the filing of the original Complaint and outside the allotted time-frame under Rule 4(m). However, after the Court notified Plaintiff on April 12, 2005, of the impending dismissal for having not yet served Defendant with a Summons and Complaint, Plaintiff filed a petition on April 21, 2005, informing the Court that the parties had been negotiating and petitioned the Court for thirty additional days to serve the Summons and Complaint. The Court has discretion to either extend the service time when good cause is shown or to dismiss the action. *U.S. v. Ninety Three Firearms*, 330 F.3d 414, 426 (6th Cir.

2003). The determination of good cause is left to the sound discretion of the District Court. *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994); *Williams v. Smith*, 1999 WL 777654 at *1 (6th Cir. Sept. 17, 1999). The Court found that Plaintiff had shown good cause and issued an order on May 9, 2005, which gave Plaintiff until May 21, 2005, to serve Defendant with a Summons and Complaint. When Plaintiff served the Summons and Complaint on May 18, 2005, Plaintiff complied with this Order. Defendant's motion is without merit. Therefore,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss for Failure to Serve Summons and Complaint Pursuant to Federal Rules of Civil Procedure, Rule 4(m) (Dkt. No. 9) is **DENIED**.

DATED in Kalamazoo, MI:
August 4, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE